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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/680,365	10/05/2000	R. Raymond May	38866/204611	8236
826	7590	04/15/2004	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			PATEL, JAGDISH	
ART UNIT		PAPER NUMBER		3624

DATE MAILED: 04/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/680,365	Applicant(s) MAY, R. RAYMOND
	Examiner JAGDISH PATEL	Art Unit 3624 Mg,

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 05 October 2000.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-7 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-7 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2 and 3.
4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. .
5) Notice of Informal Patent Application (PTO-152)
6) Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The claimed invention is directed at "a system for performing a switch auction utilizing financial instruments portfolios..". However, the claims is silent about any limitation or means which performs this stated objective. As per claim 1, there is no element of the system which performs a "switch auction".

4. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: limitation(s) that would relate "means for matching offsetting risk positions" to "means for determining an auction price" and "means for calculating relative risk positions". (emphasis added to highlight the discrepancy).

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Furthermore, limitation "means for offsetting risk positions" does not relate to the financial portfolios received at the "means for receiving financial instrument portfolios inputted by ..traders".

These deficiencies render claim 1 and dependent claims 2-7 indefinite because the scope of the claims cannot be ascertained clearly and definitely.

5. Claims have been analyzed as best understood in light of the aforementioned deficiencies.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donner et al. (EP 0 512 702 A2) (Donner) and further in view of Lupien et al. (US Pat. 5,101, 353) (Lupien).

Donner discloses a system for matching offsetting risk positions of a first and second traders based on credit

preferences of a first and second traders (see p. 2 L 49+ and continuing on p. 3 L 8.

Donner fails to teach means for calculating relative risk positions for the first and second trades based on received financial instrument portfolios received from the first and second trades.

Lupien in the same field of endeavor, teaches a system for matching financial instruments portfolios. Lupien discloses means for calculating risk positions for the first and second trades based on received financial instrument portfolios received from the first and second trades. ((abstract, The system analyzes a variety of factors which affect trading decisions..Col. 3 L 3+ the system contains portfolio balancing controls which seek to ensure that the risk and return characteristics of each portfolio are retained throughout..)).

It would have been obvious to combine Lupien with of Donner so the risk positions are calculated for the first and second trades based on received financial instrument portfolios received from the first and second trades and subsequently match offsetting risk positions of the first and second traders based upon their respective credit preferences, because the combined system would permit

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matching risk positions based on credit preferences of the traders ensuring that the trades executed by the system would be in accordance with the risk tolerance of each participating trader.

8. Claims 3-7: All other claim limitations are disclosed by Donner. (see p. 2 L 49+ and Figures 2A, 3B, and 4A).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jagdish Patel whose telephone number is (703) 308-7837. The examiner can normally be reached Monday-Thursday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin, can be reached at (703) 308-1038. The fax number for Formal or Official faxes to Technology Center 3600 is (703) 305-7687. **Draft faxes may be submitted directly to the examiner at (703) 746-5563.**

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113 or 308-1114. Address for hand delivery is 2451 Crystal Drive, Crystal Park 5, 7th Floor, Alexandria VA 22202.

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Jagdish N. Patel

Jagdish N. Patel

(Primary Examiner, AU 3624)

4/12/04